

**CASCADE COUNTY SPECIAL COMMISSION MEETING**

**November 21, 2019**

**COMMISSION CHAMBERS**

**FAMILY LIVING CENTER MT EXPO PARK**

**5:30 PM**

**Commission  
Journal #59**

Notice: Pursuant to MCA 2-3-212(1), the official record of the minutes of the meeting is in audio form, located at [cascadecountymt.gov](http://cascadecountymt.gov) and the Clerk and Records Office. This is a written record of the meeting to reflect all the proceeding of the Board. MCA 7-2-2611 (2) (b). Timestamps are indicated below, in red, and will direct you to the precise location should you wish to review a specific agenda item audio segment. This written record is in draft form until officially approved on December 24, 2019.

**Cascade County Commission:** Chairman Joe Briggs, Commissioner James L. Larson and Commissioner Jane Weber

**Present:** Carey Ann Haight and Charity Yonker – Deputy County Attorney’s, Sandor Hopkins – Interim Planning Director, Anna Ehnes – Planner, Bonnie Fogerty – Commission Office and Kyler Baker – Deputy Clerk and Recorder

**Public:** Carolyn K. Craven, Kathleen McMahon, Nate Kluz, Ron D Scott, Luanne Scott, Lou Udall, A. Hisham, Madella Dale, Laura Revenscroft, Greg Dammen, Gloria Burrows, Matt Gressman, Fabiola Hanser, Marie Berts, Justin Berts, Angie Poupa, Tony Poupa, Kathy Dammen, Nancy Rossmiller, Dana Rossmiller, Jim Wobia, Fred F. Burrows, Lindsey Nichols, Karen Carlson, Bill Rogers, Marilyn Rogers, Susan Colin, Sue Eleen, David Saslav, Shannon Guilfoyle, Brian Nelson, Carol Peretti, June Buckle, Myrl Nardinger, Laura Hodges, Bonnie Beuning, SueAnn Strickland, Pat Broaden, Cheryl McGee, Linda Gonser, Dale Nelson, LaLonnie Ward, John Casselli, Patricia Shafer, Rick Pepos, Kara Pepos, S. Patton-Griffin, Stephanie G., Joseph Wipf, Kris Lattin-Jackson, Gretchen L. Grubidge, Karen Flater, Margaret Butcher, John Tingey, Kris Oleya, Steve Kind, Ben Wipf, Edward Friesen, Alexis Willaims, Roger Bidwell, Thomas Jackson, Michael Enk, Xavier Jackson, Amber Stensal, Kathy A. Buckles, Tom B. Matthews, Erin Tingey, Sarah Converse, Neal Cleveland, Dale Swanson, Marilyn Kind, Brett Doney, Monte Thompson, Quenby Klippenes, Sherry Lynn Dow, Erin Tropila, Jim and Conni Gray, Deborah Jenkins, David Wipf, Marie May, Kerri Ann Fraser, Eileen Hyndman, Jaybe Floyd, Cheryl Chaon, Tom and Katie Kotynski, Michael Jenkins, Peter Johnson, Anthony May, Jo Walden, Michael Vetere, Richard Grengovich, Linda Redding, Ray Redding, Glen Coulter, Leanna Coulter, Richard and Paula Roof, Terry Thompson, Jim Thayer, Michelle Patterson, Brian McKinney, Mary Beth Ewen, Robert Sivertsen, Ivalee Robertson, Maureen Nardinger, Janet Halko, David P. Wipf, Larry Anderson, Linda Metzger, Carol Robinson, Joe Murphy, Cleve Loney, Corrine Cindhorst, Richard L. Hopkins, Sharon Puefry, Pennie Vihinen, Ron Vihinen, Mary Moe, Dan Huestis, Jenn Rowell and Karl Puckett.

Chairman Briggs called the meeting to order at 5:30 p.m.

Charity Yonker, Deputy County Attorney, reads background. **01:23 – 06:51**

*(See Exhibit A for all conditions being read below)*

*(See Exhibit B for the Applicants original application)*

**SUP CONDITION #2 07:33**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **07:33 – 14:21**

Commissioner Jane Weber reads the *Findings and Conclusions*. **14:21 – 23:32**

Commissioner Jane Weber made a **MOTION** that after consideration of the entire record for SUP #006-2019 concerning only Condition #2, **AFFIRM**, the ZBOA correctly determined that a mitigating condition is reasonable necessary to prevent possible adverse effects on groundwater and existing water wells; but **MODIFY** Condition #2, as it is unreasonable as written, as follows:

**The Applicant shall comply with and obtain all necessary approvals from the Montana Department of Natural Resources and Conservation concerning the development and use of the water resources to be utilized by the proposed development. 23:41**

Commissioner Larson commented that he would have liked to of had the chance to comment before a motion was proposed. Larson also stated that he was concerned about the amount of water that will be pulled from the wells without any form of monitoring. **24:38**

Chairman Joe Briggs commented that he was concerned that the condition imposed by the ZBOA is not legal because it is beyond the scope of Cascade County Government. **31:07**

**Motion carries 2 to 1 33:47 (For: Briggs and Weber) (Against: Larson)**

**SUP CONDITION #3 34:08**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **34:08 – 40:09**

Commissioner James Larson reads the *Findings and Conclusions*. **41:30 – 44:29**

Chairman Joe Briggs comments about two issues with this condition. **44:29 -44:42**

Commissioner Jane Weber made a **MOTION** that after consideration of the entire record for SUP #006-2019 concerning only Conditions #3, **AFFIRM**, that a mitigating condition is reasonable necessary to protect the public, community, and/or private water supplies, including possible adverse effects on surface water and/or groundwater from materially endangering the public's health and safety; but **MODIFY** Condition #3, as it is unreasonable as written, to read as follows:

**The Applicant obtains approval from the City-County Health Department ("CCHD") and Montana Department of Environmental Quality ("MDEQ") for a new public water supply/wastewater system. The Board requests the MDEQ consider requirements for the wastewater ponds to be lined. In the event, MDEQ requires periodic monitoring reports of either the public water supply or wastewater system, the Applicant is required to provide a copy of any such report(s) to the CCHD Environmental Health Division within 10 days of submitting to MDEQ. 45:58**

**Motion carries 3-0 47:33**

### **SUP CONDITION #7 47:55**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. 47:58 – 56:38

Commissioner Jane Weber reads the *Findings and Conclusions*. 56:41 – 57:45

Commissioner Jane Weber commented about the operating hours of 7 am to 7 pm and says that the applicant did not provide enough information on the application. 57:46

Commissioner James Larson says he agrees there is not enough information from the applicant. 58:49

Commissioner Joe Briggs states that a removal of hours of operations has happened at another business and it has not gone well. Also asks what does “operation” mean – actual cheese production, aging of cheese, and digestion of waste material. 59:09 – 1:00:23

Commissioner Jane Weber states that deliveries to and from the plant could happen outside of the operating hours of 7:00 am to 7:00 pm. 1:01:04

Commissioner Jane Weber made a **MOTION** that the Commission **REMAND** Condition #7 back to the ZBOA to develop the record concerning (1) why an operating time limitation is necessary; and (2) what makes a limitation from 7 am to 7 pm reasonable.

**Motion carries 2-1 1:02:28 (For: Larson and Weber) (Against: Briggs)**

### **SUP CONDITION #8 1:05:40**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. 1:05:40 – 1:07:47

Commissioner James Larson reads the *Findings and Conclusions*. 1:07:53 – 1:09:15

Commissioner Jane Weber states that the concern about the odor from the plant is a large concern from the public. 1:09:20

Commissioner James Larson states he was not sure of the ZBOA’s intent and that it is not feasible for the plant to be completely indoors. 1:10:16

Commissioner Briggs states he concurs with Commissioner Weber that the condition is valid but should be modified. 1:11:07

Commissioner Jane Weber made a **MOTION** to **AFFIRM** in part, the ZBOA’s decision that a mitigating condition is reasonably necessary to harmonize the proposed development with that of surrounding land uses and development and to resolve potential conflicts concerning odor; but **MODIFY** in part Condition #8 as it was unreasonable as written. Therefore, we modify condition #8 to read:

**The Applicant shall install a filtered exhaust system inside the cheese processing facility for the purpose of reducing odors released into the outside air. Additionally, any outdoor activities must be compliant with activities allowed in the Agricultural District without the issuance of a special use permit. 1:12:07**

**Motion carries 3-0 1:13:34**

### **SUP CONDITION #12 1:13:42**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. 1:13:45 – 1:17:09

Commissioner James Larson reads the *Findings and Conclusions*. 1:17:23 – 1:19:09

Commissioner James Larson questions the legality of giving an easement to oneself. 1:20:09

Commissioner Jane Weber states she read and understood it differently stating she thought it required the applicant to get an easement from the highway to their facility. 1:20:44

Commissioner Jane Weber also stated that on the map it shows Madison Food Park owns all the land up to the highway making it unnecessary to acquire an easement from themselves. **1:20:50**

Commissioner James Larson says that the easement would be granted from Madison Food Park to the Public. **1:22:36**

Commissioner Joe Briggs states that Commissioner Larson brought up an interesting point but also says that he thinks it is not appropriate for the ZBOA to require the easement also stating he is still in favor of reversing the condition. **1:22:58**

Commissioner James Larson asks Charity Yonker if the ZBOA's action is legal? **1:24:26**

Charity Yonker, Deputy County Attorney, responds. **1:24:35 – 1:25:32**

Commissioner Jane Weber made a **MOTION** to **REVERSE** the ZBOA's decision to impose Condition #12 on the grounds that an easement is unnecessary to obtain legal access to the proposed development and is unreasonable since it is impossible for the Applicant to satisfy. **1:26:01**

**Motion carries 2-1 1:26:29 (For: Briggs and Weber) (Against: Larson)**

#### **SUP CONDITION #14 1:26:42**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **1:26:45 – 1:31:10**

Commissioner Jane Weber reads the *Findings and Conclusions*. **1:31:12 – 1:33:10**

Commissioner Joe Briggs states he doesn't see how the ZBOA can apply the condition that removes the underlying rights. **1:33:38**

Commissioner Jane Weber made a **MOTION** to **REVERSE** Condition #14 on the grounds that it is an unreasonable condition to impose when having livestock and dairy cows on property located in the Agricultural District is an allowed use of the land. **1:35:31**

**Motion carries 3-0 1:35:57**

#### **SUP CONDITION #15 1:36:06**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **1:38:37 – 1:40:00**

Commissioner James Larson reads *Findings and Conclusions*. **1:40:26 – 1:41:30**

Commissioner Jane Weber states that emergency response vehicles are made to go off road. **1:41:38**

Commissioner James Larson made a **MOTION** to **REVERSE** Condition #15 as not reasonably necessary to ensure an adequate provision of emergency services or that dust control measures are reasonable necessary to prevent materially endangering the public's health and safety. **1:44:11**

**Motion carries 3-0 1:45:40**

#### **SUP CONDITION #16 1:45:55**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **1:46:06 – 1:47:41**

Commissioner James Larson reads *Findings and Conclusions*. **1:48:15 – 1:49:00**

Commissioner Jane Weber stated that subdivision regulations are not part of the zoning requirements and are above and beyond the ZBOA, although they had the best intentions. **1:49:26**

Commissioner Jane Weber made a **MOTION** to **REVERSE** Condition #16 as not reasonably necessary to prevent materially endangering the public safety. **1:49:39**

**Motion carries 3-0 1:49:56**

**SUP CONDITION #17 1:50:02**

Charity Yonker, Deputy County Attorney, reads *Facts Presented*. **1:50:07 – 1:54:15**

Commissioner Jane Weber reads *Findings and Conclusions*. **1:54:25 – 1:57:00**

Commissioner Jane Weber states the way the ZBOA stated the condition is not totally clear. **1:57:07**

Commissioner James Larson states he thinks this condition should be modified as well. **1:57:35**

Commissioner Joe Briggs says he also agrees, and that building code governs the inside fire suppression inside a building. **1:58:41**

Commissioner Jane Weber made a **MOTION** to **AFFIRM** in part, the ZBOA's decision that an adequate fire suppression system is needed to ensure the public health and safety is not materially endangered; but **MODIFY** Condition #17 as it is unreasonable as written as it implies only a fire cistern can be installed to provide adequate fire protection. Therefore, we take the following action:

**Applicant shall install an onsite fire suppression system meeting Montana State Building Code requirements and obtain a letter from the Sand Coulee Volunteer Fire Department stating their belief that the onsite fire suppression system is adequate to ensure fire protection for the subject parcel. 1:59:41**

**Motion carries 3-0 2:00:40**

Commissioner James Larson made a **MOTION** that the Cascade County Commission adopt all the amended conditions that were presented here tonight. **2:01:17**

**Motion carries 3-0 2:01:37**

**Public comment on any public matter that is not on the meeting agenda and that is within the Commissioners' jurisdiction.**

Fred Burrows, 111 Pfife Road, comments from the podium. **2:07:52**

Kathleen McMahon, 151 Wedgewood Lane, Whitefish, MT, comments from the podium. **2:08:33**

**Adjournment:** Chairman Briggs adjourned this special meeting at 7:42 p.m.